

Wisconsin Department of Transportation

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Scott Walker
Governor

Mark Gottlieb, P.E.
Secretary

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Jonathan Becker, Administrator
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GOVERNMENT ACCOUNTABILITY BOARD

Dear Mr. Becker:

Thank you for affording me the opportunity to respond to the letter you received from Citizens for Responsibility and Ethics in Washington (CREW). I will address the issues in the order they were presented in the letter. Ms. Sloan asked "whether Governor Walker violated Wisconsin state law by sending members of the Wisconsin State Patrol ... to locate Senator Matt (sic) Miller?" The short answer is "No." First, the Governor did not send any members of the State Patrol anywhere. Second, had he done so, or otherwise requested the State Patrol to assist the legislature, he would not have violated any law of the State of Wisconsin. While Governor Walker has publicly and repeatedly encouraged certain Senators to return to Madison so that they may participate in the debate pertaining to Special Session Senate Bill 11, the Governor has not called a state of emergency or otherwise activated the State Patrol by exercise of his authority under Chapter 323, Wis. Stats. The Governor has had no involvement in the coordinated activities of any of the law enforcement agencies that have pooled their resources in response to this peaceful exercise of our citizens' First Amendment right to assemble and give voice to their support or opposition of this proposed legislation.

The Wisconsin State Patrol has assigned personnel to the law enforcement command center in order to direct the activities of the state troopers who have been assigned to assist local and state authorities around the capitol building and adjoining streets. It is not at all unusual for the State Patrol to assist local and municipal authorities when the need arises. In Madison, for example, the State Patrol has assisted Madison police for the past several years at "Freakfest" and at every Badgers football home game.

On Wednesday, February 23, 2011, Senate Sergeant-at-Arms Ted Blazel requested the assistance of the State Patrol in a planned attempt to make contact with certain absent members of the State Senate the following morning (February 24, 2011). The State Patrol command assigned troopers to make contact with legislative staff members on the morning of February 24th and accompany those legislative staff

members to the residences of four State Senators. The troopers were operating in accordance with the following directive:

"The trooper's only role is to provide security and preserve the peace. They are NOT to take the Senator into custody or attempt to detain them in any way." (emphasis in the original)

The Senate Sergeant-at-Arms is defined by Senate Rule 99(78) as ... "The officer elected by the members to perform and direct the police and custodial function of one of the houses."

Senate Rule 84 provides "The chief Clerk shall furnish the sergeant-at-arms with a list of those who are absent without leave; and the sergeant-at-arms shall forthwith proceed to find and bring in such absentees."

The State Patrol has historically assisted law enforcement agencies throughout the state on an as needed basis. State troopers are sworn law enforcement officers with the same peace keeping authority and arrest powers of other law enforcement officers as specified in section 110.07(2m), Wis. Stats. They are specifically authorized to safeguard state officers or other persons." Section 110.07(2m), Wis. Stats.

Ms. Sloan also alleged that "Gov. Walker has used the state troopers in a dispute between an employer – the State of Wisconsin – and employees – public employees of the State of Wisconsin."

Sections 110.07(2m) and 323.17, Wis. Stats., provide that troopers "may not be used in or take part in any dispute or controversy between an employer and employee concerning wages, hours, labor or working conditions."

As previously noted, the Governor has not invoked his authority under Chapter 323. While it is true that certain provisions of Special Session Senate Bill 11 may implicate "wages, hours, labor or working conditions," this is not "a dispute or controversy between an employer or employee."

Special Session Senate Bill 11 is a budget repair bill that is proposed by the Governor and those members of the legislature who support it, to close a looming budget deficit of \$137 million. The persons assembled in and around the capitol building are citizens exercising their valued First Amendment rights to peacefully assemble and protest against, or speak in favor, of this proposed legislation. Many of them may very well be state employees, however, many more are grade school, high school and college students, teachers, business owners, municipal employees and citizens of every other conceivable stripe. This is not a wage dispute, it is political discourse concerning the legislative process. The State Patrol is merely assisting other law enforcement agencies in crowd control activities, as it has done repeatedly since its inception and additionally, safeguarding state officers as expressly provided in section 110.07(2m), Wis. Stats.

Ms. Sloan further alleges that Governor Walker "obtained an unlawful benefit" "by abusing his position as governor to ask the WSP to send a message to Sen. Miller – in an effort to gain an advantage in his wage dispute with the state's public employees."

As previously noted, it was not the Governor, but rather the Senate Sergeant-at-Arms, who requested the assistance of the State Patrol in contacting four senators who were absent without leave. The expressed purpose of the assignment was to safeguard both the legislative staff persons who would be attempting the contacts and the State senators who were to be contacted. It is immaterial whether or not Senate President Scott Fitzgerald had conferred with the Governor before authorizing the Senate Sergeant-at-Arms to find senate members who were absent without leave.

It is indisputable that at common law legislative bodies possess the inherent authority necessary to compel the attendance of their members. In Wisconsin's Constitution, this authority is expressed in Article IV section 7:

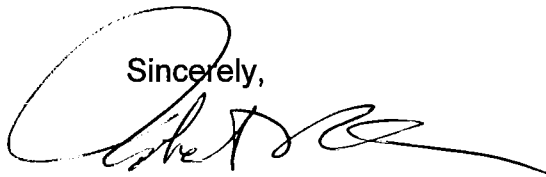
Each house shall be the judge of the elections, returns and qualifications of its own members; and a majority of each shall constitute a quorum to do business, but a smaller number may adjourn from day to day, AND MAY COMPEL THE ATTENDANCE OF ABSENT MEMBERS IN SUCH MANNER AND UNDER SUCH PENALTIES AS EACH HOUSE MAY PROVIDE (emphasis supplied).

Senate Rule 16 provides that "Members of the senate may not be absent from the daily session during the entire day without first obtaining a leave of absence."

When the conditions precedent for a "Call of the Senate" have been, Senate Rule 84 directs that the Sergeant-at-Arms "shall forthwith proceed to find and bring in such absentees."

It would appear that this is the process which was followed in this instance. Thus neither Governor Walker, nor Senator Scott Fitzgerald, nor Sergeant-at-Arms Ted Blazel, nor any involved Wisconsin State Patrol personnel have committed any violation of any ethical or legal duty.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Jambois", written over a horizontal line.

Robert Jambois
General Counsel